Procedure Code, the judgment of the judge becomes the judgment of the court and that he has full authority to give that judgment contrary to the opinion of the assessors. Indeed, he is bound to make up his own mind on the facts and not be guided by the opinions of the assessors. There is nothing in this ground in law or otherwise. For these reasons the court is of the opinion that this appeal should be dismissed, and it is dismissed accordingly.

Appeal dismissed.

LOW GEK KIM v. SEOW LEK KEE

[O.C.J. (Winslow J.) October 9, 1964]

[Singapore — Originating Summons No. 100 of 1964]

Husband and Wife — Plaintiff and defendant living as — Personal property — Joint deposit of jewellery in bank safe deposit — Joint property.

Banking — Deposit of jewellery in joint names in bank — Parties living together as man and wife — Notice of severance — How property to be divided.

The plaintiff and defendant who had been living together as man and wife hired a safe deposit at the Oversea-Chinese Bank in their joint names and stored various items of jewellery in it. The box was operated by the plaintiff who used to take jewellery out from time to time, some of which she replaced and some of which she did not. The plaintiff and defendant parted company in 1963. It was common ground that the object behind the storage of jewellery in the box was to provide for their old age and to enable the survivor to utilise the contents for the purpose of providing a good funeral for the other and to keep whatever balance remained for his or her own sole use.

Held: the present contents of the box are the joint property of the plaintiff and defendant during their lives and as notice of severance had been given the contents must be divided between them in equal shares.

Cases referred to:—

(1) *Foley* v. *Foley* [1911] 1 Ir.R. 281.

(2) *In re Harrison, Day* v. *Harrison* (1920) 90 L.J.Ch. 186.

ORIGINATING SUMMONS.

H. Wilson for the plaintiff.

C. F. J. Ess for the defendant.

Cur. Adv. Vult.

Winslow J.: In 1961 the plaintiff and defendant, who had been living together as man and wife for over 20 years, hired a safe deposit box No. 140 from the Oversea-Chinese Bank in their joint names in which they stored various items of jewellery which they have described and with regard to which they have produced reasonably satisfactory evidence that they were in fact so stored either from the commencement of the hiring or from time to time thereafter.

The box was operated by the plaintiff who used to take jewellery out from time to time, some of which she replaced and some of which she did not.

The question for decision now is who is entitled to whatever jewellery remains in this box.

It is common ground that, from the time that the box was first hired until early 1963, when the plaintiff and defendant parted company, the object behind the storage of jewellery in this box was to provide for their old age and to enable the survivor to utilise the contents of the box for the purpose of providing a good funeral for the other and to keep whatever balance remained for his or her own sole use.

In my view, the law relating to the ownership of jewellery stored in a box in the joint names of two persons such as the plaintiff and the defendant in these circumstances is analogous to the law relating to a banking account held in the joint names of two such persons. As *Hart* observes at page 321 of the Law of Banking Volume 1, 4th Edition —

> "An account in the name of two or more persons, not being partners, can properly be drawn against only by a cheque signed by each of them, in the absence of special directions given by them to the banker.
>
> But, upon the death of one of them, the survivor is entitled to the credit balance then existing."

At page 323 *Hart* refers in the same volume to two cases which are appropriate to an understanding of the law to be applied in the present case in the following terms:—

> "In *Foley* v. *Foley* (1) A., a woman carrying on business in a small shop and possessed of 1,200*l.*, had married B., a workman. Both before and after the marriage A., in the presence of B., announced her intention to put this sum into their joint names, to become the property of the survivor; and a few days after the marriage, without any solicitation or pressure on B's part, she lodged the money on deposit receipt in their joint names. In her evidence at the trial she said that the money was to be 'on both our names to work on it as husband and wife should'. After the marriage B. paid his wages to her. The money on deposit was drawn on from time to time as required for the shop or other expenses, the profits of the shop being lodged from time to time on deposit receipt in their names. It was held that the money was the joint property of A. and B. during their lives, and that it would become the absolute property of the survivor.
>
> In *In re Harrison, Day* v. *Harrison* (2) a husband had in 1908 transferred the money standing to a current account at his bank in his own name into the joint names of himself and his wife. He did not inform his wife of the joint account, and always drew cheques on the account himself. He died in November, 1919. The wife never drew any cheque on the account until shortly before his death, when he was in failing health and unable to attend to business. The bank manager then informed her of the joint account, and advised her to draw a cheque, which she did. The husband had also from time to time made deposits in the joint names of himself and his wife, and in August, 1919, consolidated them into one deposit in the joint names. The wife never knew of this deposit until after her husband's death. There was then found among his papers an envelope indorsed with his wife's initials and containing the deposit receipt and a document in which he said: 'I would like paying away at once if

possible as under,' with a list of names with amounts against them. It was held that the moneys standing to the credit of both the current account and the deposit account belonged to the wife as survivor, and that the document did not raise any presumption that the husband regarded the deposit as his own property."

In my opinion the present contents of the box are the joint property of the plaintiff and the defendant during their lives which will become the absolute property of the survivor on the death of the other.

As notice of severance was given by the defendant in April 1964 the plaintiff and the defendant are entitled to the contents of the box now in equal shares.

Order accordingly.

Solicitor: *Harbans, Kamil & Wilson; R. C. H. Lim & Co.*

ALSAGOFF v. ROBIN & ORS.

[O.C.J. (Choor Singh J.) October 10, 1964]

[Singapore — Suit No. 1229 of 1961]

Vendor and Purchaser — Property mortgaged by fraudulent agent — Purported sale by mortgagee — Mortgagee having no title to property — Mutual fundamental mistake — Total failure of consideration — Conveyancing and Law of Property Ordinance (Cap. 243), 7(1)(F).

Agency — Agent fraudulently mortgaging property — Mortgagee exercising power of sale — Whether purchase price recoverable.

The plaintiff's agent by a forged power of attorney purported to mortgage certain properties to the first and second defendants as security for the repayment of a loan of $6,000. Subsequently the first and second defendants sold and conveyed the properties to the third defendant in exercise of the power of sale conferred on them as mortgagees. The plaintiff brought an action for a declaration that the purported mortgage and conveyance were null and void and judgment was entered in his favour against all three defendants. The third defendant thereupon claimed recovery of the purchase price and costs against the first and second defendants on the ground that the conveyance to him was null and void and that there was a total failure of consideration.

Held: (1) equity will not undo a sale of land after conveyance on the ground of mistake unless there has been a total failure of consideration;

(2) in this case there has been a total failure of consideration resulting from mutual fundamental mistake and therefore the third defendant was entitled to recover the purchase money from the first and second defendants.

Per Choor Singh J.: A purchaser who after completion of the contract discovers that he has obtained a defective title to the land may sue for rescission of the contract and the return of the purchase money, if the agreement of sale was entered into under a mistake common to both parties, as to some fact which was a condition precedent to their contracting.

Cases referred to:—

(1) *Solle* v. *Butcher* [1950] 1 K.B. 671.

(2) *Cooper* v. *Phibbs* (1867) 2 H.L. 149.

(3) *Debenham* v. *Sawbridge* [1901] 2 Ch. 98.

(4) *Bingham* v. *Bingham* (1748) 1 Ves. Sen. 126.

(5) *Svanosio* v. *McNamara* (1956) 96 C.L.R. 186.

(6) *Clare* v. *Lamb* (1874-5) 10 C.P. 334.

SUIT.

N. A. Mallal for the plaintiff.

R. L. Eber for the 1st and the 2nd defendants.

K. E. Hilborne for the 3rd defendant.

Cur. Adv. Vult.

Choor Singh J.: The plaintiff brought this action for a declaration that two deeds relating to the land and premises known as Nos. 52 and 52A Kerbau Road, Singapore, are void. They are:—

(1) a statutory mortgage dated the 3rd May 1960 purporting to have been made by the plaintiff in favour of the first and second defendants, and

(2) a conveyance dated the 30th June 1961 executed by the first and second defendants as vendors in favour of the third defendant as purchaser.

The undisputed facts are as follows. The plaintiff became the owner of the above-mentioned property by virtue of a conveyance registered on the 21st August 1941. The plaintiff's above-mentioned and other properties in Singapore were managed by the plaintiff's agent, Syed Abdullah bin Ahmad bin Shaik Alsagoff until the agent's death on the 12th October 1942. From that date the agent's son, Syed Abdulrahman bin Abdullah Alsagoff, managed the plaintiff's above-mentioned and other properties as his agent. Acting under a power of attorney dated the 6th April 1958, which purported to have been executed by the plaintiff in favour of Syed Abdulrahman bin Abdullah Alsagoff, the latter by a mortgage dated the 3rd May 1960 mortgaged the plaintiff's above-mentioned property in favour of the first and second defendants as security for the repayment of a loan of $6,000. By a conveyance dated the 30th June 1961 the first and second defendants sold and conveyed the above-mentioned property to the third defendant for $6,500 in exercise of the power of sale conferred on them as mortgagees by the Conveyancing and Law of Property Ordinance (Cap. 243).

The plaintiff never executed the power of attorney in favour of Syed Abdulrahman bin Abdullah Alsagoff and never authorised him to mortgage the plaintiff's above-mentioned property. The power of attorney was a forgery. The plaintiff received no benefit whatsoever from the mortgage of his property or from the conveyance in favour of the third defendant.

On the 20th September 1963 the first and second defendants consented to judgment in favour of the plaintiff. On the 24th September 1963 judgment by consent was accordingly